

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff

v.

CHE SUMMERFIELD,

Defendant

Case No.: 2:20-cv-00713-APG-BNW

**Order Denying Appeal from Magistrate
Judge's Order and Petition for Writ of
Mandamus**

[ECF No. 1]

The government has appealed Magistrate Judge Weksler's order scheduling the preliminary hearing for 4:00 p.m. today. *See* ECF No. 19 in case number 2:20-mj-00231-BNW.

I have reviewed the related papers and find that Judge Weksler's order is not clearly erroneous or contrary to law. *See* Local Rule IB 3-1(a). Nor do I see any basis to issue a writ of mandamus.

In addition, the government has not shown any prejudice by having to conduct the preliminary hearing by videoconference or telephone. The government concedes it has known about this hearing since April 7, 2020. ECF No. 1 at 2:9-11; *see also* ECF No. 4 in case number 2:20-mj-00231-BNW (initial appearance setting preliminary hearing date). So, the witnesses and evidence should be available and ready to present in court.

The government also contends that "to conduct a preliminary hearing now and not provide the government an opportunity to seek indictment should a grand jury be convened during the period of extension would result in the prospect of both conducting a preliminary hearing under adverse circumstances and preparing and presenting an indictment in any event (which would be the government's intention if these conditions change)." ECF No. 1 at 9. The government fails to explain—and I have not found any reason—why it would be denied the opportunity to seek an indictment should a grand jury be convened. Nor has the government

1 shown why the deadline for a grand jury indictment cannot be extended under 18 U.S.C.
2 § 3161(h). *See also* 18 U.S.C. § 3162(a)(1) (referencing extension of indictment deadline by
3 § 3161(h). And the government has shown no harm from having to both conduct a preliminary
4 hearing and present an indictment to a grand jury later.

5 Accordingly, Magistrate Judge Weksler's order (ECF No. 19 in case number 2:20-mj-
6 00231-BNW) is AFFIRMED and the government's appeal (ECF No. 1) is DENIED.

7 DATED this 21st day of April, 2020.

8 

9
10

ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE